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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,174	09/11/2003	Roland Dille	980-00-003	7516

7590

11/29/2005

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EXAMINER

WALBERG, TERESA J

ART UNIT PAPER NUMBER

3753

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 10/661,174	Applicant(s) DILLEY ET AL.	
	Examiner Teresa J. Walberg	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 17-19 and 22-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/16/04, 4/18/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election without traverse of the species of Figs. 1-6 in the reply filed on 16 September 2005 is acknowledged.
2. Claims 17-19, and 22-42 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Note that while claim 18 was listed by applicant with the elected claims, it depends from claim 17 that was non-elected. Thus claim 18 is considered to be non-elected. Election was made **without** traverse in the reply filed on 16 September 2005.
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).
4. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

- Where applicable, the abstract should include the following:
- (1) if a machine or apparatus, its organization and operation;
 - (2) if an article, its method of making;
 - (3) if a chemical compound, its identity and use;
 - (4) if a mixture, its ingredients;
 - (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

5. The abstract of the disclosure is objected to because it does not include information on the organization and operation of the apparatus. Correction is required. See MPEP § 608.01(b).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1, 14-16, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Modine (DE 296 16 354, cited by applicant).

Modine discloses a heat exchanger having a substantially rectangular cover plate, upper plate, lower plate, and bottom plate, an inlet and outlet for each of first and second fluids on the sides of the plates, and a plurality of upper and lower plates. See Figs. 1 and 2.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3753

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Modine (DE 296 16 354).

While Modine does not appear to state the flow rate or Reynolds number, it would have been obvious to one of ordinary skill in the art to use any desired flow rate or Reynolds number, based on the intended use of the device.

10. Claims 2-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modine (DE 296 16 354) in view of Brenner et al (6,318,456).

Modine discloses a heat exchanger having the claimed structure with the exception of rectangular openings, headers having circular and rectangular cross sectional areas, brazed seals, stainless steel plates, flow partitions, and surface indicia on one or more plates.


Brenner et al disclose a heat exchanger having rectangular openings (Fig. 7), headers having circular and rectangular cross sectional areas (Figs. 11 and 12), brazed seals (col. 5, line 3), stainless steel plates (col. 5, line 2), flow partitions (54a in Fig. 9), and surface indicia on one or more plates (col. 4, line 43).

It would have been obvious in view of Brenner et al to provide such features in the heat exchanger of Modine, the motivation being to increase the rate of heat transfer.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa J. Walberg whose telephone number is 571-272-4790. The examiner can normally be reached on M-F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Blau can be reached on 571-272-4406. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Teresa J. Walberg
Primary Examiner
Art Unit 3753

tjw